

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK

2 -----x
3 UNITED STATES OF AMERICA : Docket No. 06CR6009CJS
4 :
5 vs. :
6 :
7 MARIAN ASENNOV PENEV :
8 Defendant :
9 -----x Status

10 Transcript of Proceedings
11 Before Honorable Charles J. Siragusa
12 United States District Judge

13 Friday
14 November 17, 2006
15 Rochester, New York
16 11:00 a.m.

17 Appearances:
18 RICHARD RESNICK, ESQ.
19 Assistant United States Attorney
20 6200 Federal Building
21 Rochester, New York 14614

22 DONALD THOMPSON, ESQ.
23 16 West Main Street, Suite 243
24 Rochester, New York 14614
25 Attorney for Defendant

26 Reported By:

27 Karen J. Bush
28 Official Court Reporter
29 U.S. District Court - WDNY
30 (585) 613-4312

31 THE COURT: For the record, this is the matter of

1 the United States versus Marian Penev. You are Marian Penev?

2 THE DEFENDANT: Yes.

3 THE COURT: And you're appearing with your attorney
4 Mr. Thompson; is that correct?

5 THE DEFENDANT: That's correct.

6 THE COURT: The Court notes the presence of Mr.
7 Resnick on behalf of the government. Counsel, this matter was
8 put on today to set a trial date. Now, Mr. Resnick, how much
9 time do we have on the speedy trial?

10 MR. RESNICK: I calculated this morning a full 70
11 days takes us to January 26th.

12 THE COURT: Bear with me while I get up my computer.
13 We'll start on the 16th. Put the trial down for the 16th.
14 How long, counsel, do you anticipate it will take to block out
15 sufficient time?

16 MR. RESNICK: I anticipate week, week and a half and
17 Mr. Thompson indicated three.

18 THE COURT: Do you think three?

19 MR. THOMPSON: I think closer to three than a full
20 week.

21 THE COURT: I know both sides will have a lot
22 invested in time. We'll set aside three weeks. That takes us
23 to when?

24 THE CLERK: Up to February 5th.

25 THE COURT: We'll block out that three-week period.

1 I anticipate, I don't know, because, obviously, there is
2 issues of computers.

3 MR. RESNICK: Yes.

4 THE COURT: I anticipate we'll be in Judge Telesca's
5 courtroom. Does that accommodate both sides?

6 MR. RESNICK: It would be preferable to get in Judge
7 Larimer's.

8 MR. THOMPSON: He has the newer system.

9 THE COURT: In the past we've been able to do that.
10 I'll send Judge Larimer an email and ask if we could possibly
11 use his courtroom for the courtroom because it will involve --

12 MR. RESNICK: We'd like to show the IMs or emails
13 that are in issue on the screen to the jury. It would be
14 easier that way.

15 THE COURT: I will do that and I'll let both of you
16 know whether he is agreeable to that. If he is, we'll try the
17 case in Judge Larimer's courtroom. If he is not for some
18 reason, he is in -- the Kodak case is starting that way down
19 the road?

20 MR. RESNICK: No, Judge.

21 MR. THOMPSON: My only concern, I start a trial the
22 same week you do in January and I'm not sure how long it's
23 supposed to go. I don't have my calendar. How long it's
24 blocked off, but I need may need your assistance with a state
25 court judge in accommodating the schedule here.

1 THE COURT: Who is it?

2 MR. THOMPSON: I'm trying to remember which one that
3 is.

4 THE COURT: I'll do whatever --

5 MR. THOMPSON: Judge Bellini.

6 THE COURT: -- in adjourning your case.

7 MR. THOMPSON: We don't have speedy trial concerns
8 in that case as we do here.

9 THE COURT: If you look at it, Mr. Thompson, and you
10 think that becomes necessary, I'll contact Judge Bellini and
11 see if it's possible to adjourn it.

12 MR. RESNICK: One more thing, your scheduling order
13 generally sets forth a drop dead plea date. I was wondering
14 if you could set one. We have the family that comes every
15 appearance and if there is going to be a lot of prep.

16 THE COURT: I think my scheduling order said that
17 the date, did my scheduling order indicate the date?

18 MR. RESNICK: Yes, but we had a couple extra
19 adjournments because of discovery issues.

20 THE COURT: There is no sense in me doing that
21 unless there is a possibility that it may be resolved by a
22 plea. It's not the Court's role here to become involved in
23 plea negotiations unlike the state court. So, I think the
24 first question I would ask counsel, is there ongoing
25 discussions and a possibility that the Government and the

1 Defense may reach a written plea agreement?

2 MR. THOMPSON: I've had continuing discussions with
3 Mr. Resnick. He provided to me a couple of proposed plea
4 agreements that we discussed in great specificity the terms.
5 of. Before we set a drop dead date for the plea, I would like
6 to a chance to look at the remainder of the discovery, he
7 provided a disk and another one today which will be the final
8 bit of discovery we want to examine. The examination requires
9 the assistance of my expert on Monday, but every time we come
10 to court, there has been additional discovery. We haven't
11 been in a position, okay, Mr. Penev, it's up to you and we're
12 waiting two or three months.

13 THE COURT: So I can understand, the Government has
14 presented -- and, again, because we have a lot of spectators,
15 the Court doesn't get a copy of the plea agreement until the
16 parties indicate that they're both on the same page. So I
17 don't have any clue what the plea agreement says, but a plea
18 agreement has been presented.

19 MR. RESNICK: There has been a plea agreement
20 presented to the Defense, I think a couple of drafts. Another
21 one submitted recently. Mr. Thompson is correct, there has
22 been additional discovery, really not much more than what he
23 has seen, but he needs to look at that. But, I think,
24 hopefully, we would be in a position within the next week or
25 two for Mr. Penev to make a decision.

1 MR. THOMPSON: That is not going to happen. If we
2 want to set an arbitrary -- I want an opportunity to look at
3 the discovery before you start pressuring.

4 THE COURT: First of all, again, whether the case is
5 tried or whether the Court can approve a plea agreement in the
6 first instance, that is up to the parties to present me with
7 an agreement. My concern is that I'm blocking out three weeks
8 on this case. As both sides know, Judge Telesca is no longer
9 handling criminal cases, there are certain constraints on the
10 availability of time. I'm more than willing to set a
11 reasonable time if both sides agree, but I would really be
12 hard pressed to set it beyond a couple of weeks because it
13 will be difficult then to try and schedule something in that
14 time. As it is, I'm bumping civil cases. I don't want to
15 bump them needlessly.

16 THE CLERK: There is one.

17 THE COURT: And yet I don't want to keep the civil
18 attorneys on hold on the chance that this case will not go, so
19 counsel need to tell me if two weeks is realistic. So
20 everyone knows, my scheduling order does indicate that absent
21 a plea agreement being presented to the Court and accepted on
22 the date the motions were originally scheduled, then the Court
23 would not entertain a plea to anything short of the entire
24 indictment. However, Mr. Resnick points out the complicated
25 nature of the case, there have been various adjournments. As

1 you pointed out, Mr. Thompson, you were provided with
2 discovery over the period of time, so it's not the typical
3 case. In light of that, the Court would be willing to extend
4 the time, but again, if your expert is -- let's start with
5 this, when will Mr. Thompson have all the discovery or does he
6 have it all now?

7 MR. RESNICK: I have another disk to give to him.
8 As I said to Mr. Thompson, it's things he's seen. I think
9 that is all he asked for and that's it.

10 THE COURT: So, Mr. Thompson, if you have the
11 information today and you can meet with your expert next week,
12 I guess I'll put it to you, why wouldn't you be in a position
13 to make a decision in a couple of weeks. If you don't want
14 to, that's fine. I can schedule it for trial. I'm trying to
15 accommodate.

16 MR. THOMPSON: There is a state court proceeding
17 that we're talking about simultaneously and working with
18 simultaneously that is not my part, obviously, but we're
19 trying to accommodate that as well. I understand the Court's
20 time considerations, I'm hard pressed to say, yeah, it's going
21 to only take two weeks to make the decision when I haven't
22 seen the remainder of the discovery and I resent being pushed
23 in that direction.

24 THE COURT: I don't think he is pushing you. I'll
25 calendar it for two weeks. If you're not in a position then,

1 we'll just go to trial, that's, to me, that is the fairest way
2 to do it. Give you some opportunity, Mr. Resnick, it's
3 obviously a case where you want, on any possible disposition
4 short of trial, you want to sit down and I'm sure your office
5 wants to confer with the family members and, Mr. Thompson,
6 likewise, you want to confer with family members. It's
7 certainly understandable. What I'll do is I'll -- what is the
8 status of the state court proceeding?

9 MR. RESNICK: Your Honor, both counsel are in court
10 today. I think the trial --

11 THE COURT: I see Mr. Damelio. So, Mr. Damelio,
12 you're representing Mr. Penev.

13 MR. DAMELIO: We're scheduled for trial, I believe,
14 the 21st or 22nd of January, which looks like if you're
15 starting on January 16th.

16 THE COURT: To whom is that case assigned?

17 MR. DAMELIO: Judge Bellini.

18 MR. THOMPSON: She is going to have a bad month.

19 THE COURT: I'll call her today on the scheduling
20 matter and state because of the speedy trial constraints, our
21 case has to go. What is your speedy trial clock there?

22 MR. DAMELIO: Actually, I apologize.

23 THE COURT: And who --

24 MR. RESNICK: Ms. Karle from the DA's office.

25 THE COURT: Ms. Karle, come on up and join the

1 crowd.

2 MR. DAMELIO: Judge, we have filed motions. We have
3 a hearing date and motions are currently, upon the defense
4 request, we have waived. Our motions are pending and we
5 directed and agreed that the DA would not answer our motions
6 basically until we see what happens here and how this case
7 will proceed.

8 THE COURT: What is the day that Judge Bellini set a
9 calendar date?

10 MR. DAMELIO: No, she indicated her trial date is
11 the trial date.

12 THE COURT: What about the unresolved motions?

13 MR. DAMELIO: We intend to argue them probably the
14 first week of December, the last day of November.

15 THE COURT: Just so I understand, what you're all
16 indicating to me is there is discussions among all attorneys
17 about some type of global resolution of both cases.

18 MR. THOMPSON: Yes.

19 THE COURT: Again, since everyone is here,
20 presumably, Mr. Thompson, if you get the discovery, that would
21 be -- although I understand it's maybe not as much time as you
22 would prefer, I think it would be difficult to give any more
23 time because of the speedy trial constraints here, and so
24 everyone knows, we have a lot of spectators in court, on the
25 state side, the defendant can waive the Speedy Trial Act. The

1 Speedy Trial Act requires that cases be tried within a certain
2 amount of time. On the state side the defendant can waive the
3 speedy trial requirements. Here in Federal Court, the
4 defendant cannot waive. We're on a tighter clock. As you
5 heard Mr. Resnick indicate, and Mr. Thompson agrees, under the
6 Speedy Trial Act, the case would have to be tried by the 26th
7 of -- the latest by the 26th of January and the defendant
8 cannot, by agreeing, extend that time. So, what I'm going to
9 do is put this down, today is the 17th, we'll put it down for
10 December 1st.

11 THE CLERK: Is a Federal Defender training.

12 THE COURT: I'll put this down for 9 a.m. on Friday
13 December 1st.

14 MR. THOMPSON: Actually, I think I'm speaking at
15 that one. I'm a speaker.

16 THE COURT: I'll put it down for the Thursday
17 before, 2 p.m. on Thursday the 7th. What I will do is I will
18 call Judge Bellini and explain to her our situation. I'm
19 sorry, Thursday November 30th, Thursday at 9 a.m.; is that all
20 right?

21 MR. RESNICK: 30th.

22 MR. THOMPSON: I don't have my calendar.

23 THE COURT: If you can't let us know, we'll count on
24 putting it down for Thursday November 30th at 9 a.m. for
25 counsel to alert me whether they're -- again, there's been

1 some type of resolution reached. So, obviously, counsel know
2 the procedure, but spectators may not, once an agreement then
3 is presented to me, so to see if I would approve it. I don't
4 have any input in the negotiation process. It's different
5 than in state court. In the meantime, I will call Judge
6 Bellini and tell her the situation. And, in any event, if the
7 case is resolved, it appears both cases are resolved. If not,
8 both cases will proceed to trial. And, in any event, her
9 trial would have to appear to be moved back. Since all
10 counsel are here, you can perhaps take a moment and discuss
11 the best way to approach any possible resolution short of
12 trial. Both sides want to discuss any resolutions with
13 representatives on both sides? We'll put it on then for 9
14 a.m. on November 30th for counsel to inform the Court of
15 whether the case will be resolved by plea. Now, if in the
16 meantime you determine that it will be resolved and you can
17 present the agreement to the Court, then we can proceed on the
18 30th, if the agreement is acceptable to the Court. If you
19 haven't, if we're unable to do that, but you believe a
20 resolution is possible and you're not able to give me the
21 agreement until the 30th, then I would expect a short turn
22 around. I would, if I got the agreement on the 30th and you
23 told me the resolution, I would put it down the next week to
24 see if it would be resolved short of trial. Any other matters
25 we need to address? So, what I'm going to do is contact Judge

1 Bellini and discuss the scheduling issue with her.

2 MR. THOMPSON: Very well.

3 MS. KARLE: Thank you, your Honor.

4 REPORTER CERTIFICATION

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6 I, Karen J. Bush, Official Court Reporter for the United
7 States District Court, Western District of New York, duly
8 appointed pursuant to provisions of Title 28 United States
9 Code Section 753, do hereby certify that I did report in
10 stenotype machine shorthand the proceedings held in the
11 above-entitled matter;

12 Further that the foregoing transcript is a true and
13 accurate transcription of my said stenographic notes taken at
14 the time and place hereinbefore set forth.

15

16

17 Dated March 24, 2009

18 At Rochester, New York

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s\ Karen J. Bush

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